

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MYRIAM ZAYAS,

Plaintiff,

v.

CITY OF ISSAQUAH,

Defendant.

CASE NO. 2:24-cv-625

ORDER REVOKING *IN FORMA*
PAUPERIS STATUS AND
RESOLVING REFERRAL AT DKT. 19

The Ninth Circuit has asked this Court to review Plaintiff Myriam Zayas's *in forma pauperis* ("IFP") status. Dkt. No. 19. Having reviewed the Ninth Circuit's referral, the record, and the law governing Zayas's claims, the Court is fully informed. The Court REVOKES Zayas's IFP status for the reasons below.

The Court granted Zayas IFP status on May 6, 2024, and she filed a complaint against the City of Issaquah alleging constitutional violations under Section 1983. Dkt. No. 5. Zayas alleged that Officer John Doe took her toddler away from her on May 3, 2024, under the authority of a court order. Zayas maintains that this action violates her due process rights. This Court found that Zayas's complaint did not state a viable Section 1983 claim against the City and ordered her to show

1 cause why the Court should not dismiss her complaint for failure to state a claim.
2 Dkt. No. 11; *see* Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1915(e)(2)(B)(ii).

3 In response, Zayas filed an amended complaint, but it did not cure the
4 deficiencies in her first complaint. *See* Dkt. No. 13. In its Orders at Dkt. Nos. 11 and
5 14, the Court explained why Zayas failed to state a claim upon which relief could be
6 granted—both in her initial and amended complaints. The Court dismissed the
7 action without prejudice. Dkt. No. 14. Accordingly, Zayas may attempt to bring her
8 case again and allege facts that support a viable claim under Section 1983. Instead,
9 Zayas filed a notice of appeal. Dkt. No. 17.

10 A litigant will lose her IFP status on appeal if her appeal is frivolous or taken
11 in bad faith. 28 U.S.C. § 1915(a)(3); *see also Hooker v. Am. Airlines*, 302 F.3d 1091,
12 1092 (9th Cir. 2002). A frivolous claim is one that “lacks an arguable basis either in
13 law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

14 Zayas’s arguments on appeal are frivolous, as they are not grounded in law or
15 fact. First, Zayas’s notice of appeal contends that her complaint raised valid
16 procedural deficiencies in the court order that allowed Officer Doe to take her
17 toddler, “including the lack of a hearing and improper signatures,” which “rendered
18 the order invalid.” Dkt. No. 17 at 2. Zayas did not allege the “lack of a hearing” as
19 part of the underlying violation, so the Court will not consider the allegation now.
20 *See* Dkt. No. 17 (operative complaint). But her improper signatures allegation was
21 alleged earlier and plainly has no basis in law. Zayas argues that the signatures on
22 the court order were deficient because only a judge—and not a lawyer—signed the
23

1 order. *See id.* at 1. She is wrong, of course, to argue that a court order is invalid
2 because it was signed by a judge.

3 Next, Zayas claims that the Court erred “by not employing the required
4 liberality in construing plaintiff’s claims.” Dkt. 17 at 2. But the Court read Zayas’s
5 complaint and amended complaint carefully and liberally, noting its obligation to do
6 so. *See* Dkt. 11 at 2. Even evaluating Zayas’s claims under a liberal pleading
7 standard, however, the Court could find no viable claims. *See* Fed. R. Civ. P.
8 12(b)(6).

9 Finally, in her notice of appeal, Zayas argues that her complaint alleges
10 sufficient facts to challenge Officer Doe’s immunity. Dkt. 17 at 2–3. But Zayas
11 alleges that Officer Doe acted under a signed court order. And she did not allege
12 that the order was obtained via judicial deception. *See* Dkt. 11 at 3 (Court’s
13 discussion of judicial deception).

14 Additionally, Zayas did not sue Officer Doe, or any individuals, under Section
15 1983. She sued the City of Issaquah. But she did not allege facts that could
16 plausibly support a claim against the City. She must pursue her claim against the
17 City as a *Monell* claim, but she did not allege facts that support *Monell* liability.
18 *City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (“[A] municipality can be found
19 liable § 1983 only where the municipality itself causes the constitutional violation
20 at issue.”). Zayas does not address this fatal issue in her notice of appeal.

21 Thus, the Court finds that Zayas’s appeal is frivolous. Accordingly, the Court
22 ORDERS that Zayas’s IFP status be REVOKED under 28 U.S.C. § 1915(a)(3),
23 resolving the Ninth Circuit’s Referral at Dkt. 19.

1 Dated this 16th day of July, 2024.

2 

3 Jamal N. Whitehead
4 United States District Judge
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23